

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

IN RE:)	Chapter 13
)	Case No. 10-10939
MICHAEL J. DOWNEY)	
CONNIE L. DOWNEY,)	
Debtors)	

MOTION TO MODIFY PLAN

COME NOW the Debtors above, who show the court the following:

1. The Debtors commenced this proceeding by the filing on August 9, 2010, their original petition under Chapter 13 of the Bankruptcy Code. The Confirmation Order entered October 8, 2010 provides for payments of \$4,965.00 per month for 60 months with unsecured creditors to be paid at least 10% of allowed claims.

2. The Debtors' Plan anticipated that a balloon payment due to Kondaur Capital Corporation in June, 2012, would be paid over the five years of the Debtors' Plan. On June 27, 2011, the Bankruptcy Court entered an Order granting relief from stay to Kondaur Capital Corporation, and denying that part of the Debtors' Plan which provided for payment of Kondaur Capital Corporation over a period of five years. Kondaur Capital Corporation may now proceed to foreclose on the Debtors' residence.

3. In light of the Court's holding of June 27, 2011, the Debtors are in need of an Order of this Court modifying their Plan to provide that the conduit payments and any pre-petition arrearages due to Kondaur Capital Corporation on either its first or second mortgages be removed from the Debtors' Plan, and that the Debtors' Plan be modified to provide for payment as otherwise provided in their Plan with no reduction in the percentage due to unsecured creditors.

4. The Chapter 13 Trustee has advised that if the Debtors' Motion is granted, the Debtors new payment would be \$1,170.00 beginning with their payment due in July, 2012.

WHEREFORE, the Debtors respectfully pray that their Plan be modified as set out above and that the Debtors's new monthly payments become \$1,170.00 and further,

that Edward C. Hay, Jr., attorney for the Debtor, be awarded the presumptive fee of \$350.00 for representing the Debtors in this Motion to Modify their Plan.

THIS the 14 day of July, 2011.

PITTS, HAY, & HUGENSCHMIDT, P.A.
Attorneys for the Debtor(s)

By: 

Edward C. Hay, Jr., NC Bar #7149
137 Biltmore Ave.
Asheville, N.C. 28801
(828) 255-8085

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

IN RE:)	Chapter 13
)	Case No. 10-10939
MICHAEL J. DOWNEY)	
CONNIE L. DOWNEY,)	
Debtors)	

NOTICE OF MOTION TO MODIFY PLAN

TAKE NOTICE that the Debtors herein have filed a Motion to Modify Plan with this Court. A copy of these paper(s) is included with this Notice or copied on the reverse side of this Notice.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to order the relief sought in this Motion, or if you want the Court to consider your views on the Motion, then on or before *fifteen* days from the date of this Notice, you or your attorney must do three (3) things:

1. **File with the Court a written response requesting that the Court hold a hearing and explaining your position. File the response at:**

U.S. Bankruptcy Court
Federal Courthouse
100 Otis Street, Room 112
Asheville, NC 28801

If you mail your request to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

2. **On or before the date stated above for written responses, you must also mail or fax a copy of your written request to:**

Edward C. Hay, Jr., Attorney for Debtor
137 Biltmore Ave.
Asheville, NC 28801
(828) 255-8085
Fax: (828) 251-2760

David G. Gray, Chapter 13 Trustee
81 Central Ave.
Asheville, NC 28801

3. **Attend the hearing scheduled for August 16, 2011 at 9:30 a.m.** in Room 112, United States Bankruptcy Court, Federal Courthouse, 100 Otis Street, Asheville, NC 28801.

If you or your attorney do not take these steps, **a hearing will not be held**, and the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief.

This 14 day of July, 2011.

PITTS, HAY & HUGENSCHMIDT, P.A.
Attorneys for the Debtors

By: 

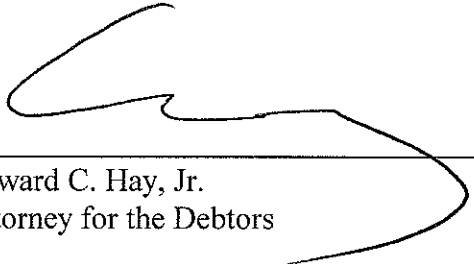
Edward C. Hay, Jr., NC Bar #7149
137 Biltmore Ave.
Asheville, NC 28801
(828) 255-8085

CERTIFICATE OF SERVICE

The undersigned certifies that the Motion and Notice to which this Certificate is affixed was served upon the parties listed below by depositing a copy of same, enclosed in a first-class postpaid wrapper properly addressed to the other parties, in a post office under the exclusive care and custody of the United States Postal Service and/or by *electronic means this 14 day of July, 2011.

*David G. Gray
Chapter 13, Trustee

*Joseph J. Vonnegut
Attorney for Kondaur Capital Corporation


Edward C. Hay, Jr.
Attorney for the Debtors